

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mic Braun	Team: Squad #05	CCRB Case #: 202300947	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/01/2023 9:48 AM	Location of Incident: 13th Precinct stationhouse	18 Mo. SOL 7/1/2024	Precinct: 13
Date/Time CV Reported Sun, 01/01/2023 10:21 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 01/01/2023 10:21 AM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Sean Fehn	04405	953849	013 PCT
2. PO Song Chen	15372	969012	013 PCT
3. LT James Briones	00000	924981	QAD

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Gordon Yuen	18037	970334	013 PCT
2. PO Michael Gopie	26954	971970	013 PCT
3. PO Brian Sweeney	23366	970248	013 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Sean Fehn	Abuse: Police Officer Sean Fehn did not process § 87(2)(b) complaint regarding an officer.	
B . LT James Briones	Abuse: Lieutenant James Briones did not process § 87(2)(b) complaint regarding (an) officer(s).	
C . PO Song Chen	Abuse: Police Officer Song Chen threatened to arrest § 87(2)(b)	
D . PO Song Chen	Discourtesy: Police Officer Song Chen spoke discourteously to § 87(2)(b)	
E . PO Song Chen	Abuse: Police Officer Song Chen threatened § 87(2)(b) with the use of force.	

## Case Summary

On January 1, 2023, § 87(2)(b) filed this complaint with the CCRB's Call Processing System, generating CCRB complaint § 87(2)(b). This case was split from that complaint, as § 87(2)(b) complained about two separate incidents.

On January 1, 2023, as detailed in CCRB case § 87(2)(b) officers ejected § 87(2)(b) from the vestibule of a bank in which he had been sleeping. At approximately 9:48 a.m. that same day, § 87(2)(b) entered the 13<sup>th</sup> Precinct stationhouse and interacted with PO Sean Fehn, PO Gordon Yuen, PO Song Chen, PO Michael Gopie, and Lt. James Briones. He requested to file a civilian complaint against the officer who ejected him from the bank. PO Fehn and Lt. Briones allegedly failed to process § 87(2)(b) request (**Allegations A-B: Abuse of Authority, § 87(2)(g)** § 87(2)(b) then left, and PO Chen called after him that he would be arrested if he returned (**Allegation C: Abuse of Authority, § 87(2)(g)** PO Chen also called out to § 87(2)(b) "I'll fuck you up" (**Allegation D: Discourtesy, § 87(2)(g)** **Allegation E: Abuse of Authority, § 87(2)(g)** This incident did not result in any summonses or arrests.

The investigation obtained stationhouse CCTV footage (**BR 01-03, summarized in BR 04**), BWC footage (**BR 05, summarized in BR 09**), and cellphone video footage from § 87(2)(b) (**BR 10-11, summarized in BR 12**). All references to video refer to the timestamp in the video player and not to the on-screen timestamp.

Lt. Briones, assigned to the 13<sup>th</sup> Precinct at the time, has since been transferred to the Quality Assurance Division.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Sean Fehn did not process § 87(2)(b) complaint regarding an officer.**

**Allegation (B) Abuse of Authority: Lieutenant James Briones did not process § 87(2)(b) complaint regarding an officer.**

**Allegation (C) Abuse of Authority: Police Officer Song Chen threatened to arrest § 87(2)(b)**

**Allegation (D) Discourtesy: Police Officer Song Chen spoke discourteously to § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Song Chen threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) provided testimony in a phone statement (**BR 13**) and a formal interview (**BR 14**). He testified that he went to the stationhouse to file a complaint about an incident with officers earlier that day. He began recording before he walked in. He told either PO Gopie or PO Fehn that he wanted to file a complaint against the officers. PO Fehn told him that he could not film with his phone in the stationhouse and told him to leave. Outside the stationhouse, PO Fehn, PO Gopie, PO Chen, and PO Yuen surrounded § 87(2)(b). PO Fehn showed him a sign which listed various methods for filing civilian complaints against officers, which § 87(2)(b) recorded on his video. No officer told § 87(2)(b) that he could file his complaint at the stationhouse. § 87(2)(b) never wrote down his complaint for the officers. As § 87(2)(b) walked away, an officer raised his voice and said, "Get the fuck off the block or we're gonna kick the shit out of you!"

§ 87(2)(b) first cellphone video (**BR 10, at 00:00**) captures him entering the stationhouse for the first time. PO Fehn immediately tells him that he cannot record. In a loud, agitated tone, § 87(2)(b) asks to "record" to an officer outside and says that he was thrown out of a bank and kicked in the foot. Multiple officers talk over him, which is unintelligible in the audio. Lt. Briones, whose head is just barely visible

as he is sitting behind the front desk, points his finger toward the door. § 87(2)(b) says that he needs to know who is in charge and begins to exit. He continues speaking in a loud tone about an earlier incident with an officer. In a similarly loud tone, an officer responds, “Get out of the precinct now!” It cannot be discerned which officer gives that order. At 00:33, § 87(2)(b) is standing on the sidewalk, just outside the outer doorway of the stationhouse. PO Gopie stands inside the doorway. § 87(2)(b) says, “I want to make a complaint right now, please. How do I do that?” PO Fehn is standing a distance away, inside the stationhouse lobby. He calls out to § 87(2)(b) and asks him why officers ejected him from the bank and tells him he cannot sleep in a bank. The cellphone video ends while § 87(2)(b) and PO Fehn are still speaking.

Stationhouse surveillance footage (**BR 02, 00:18:25-00:19:00**) provides a view of § 87(2)(b) entering and exiting the stationhouse during the time frame that is captured in his first cellphone video. At no point does he re-enter the stationhouse. He stands outside the front door for a few minutes and appears to be speaking animatedly on the phone. At 00:24:35, PO Fehn brings the sign outside, accompanied by PO Chen, PO Gopie, and PO Yuen. § 87(2)(b) appears to leave the vicinity around 00:25:30 and the officers come back inside. § 87(2)(b) returns to the area outside the front door at 00:26:05, holding up his phone and yelling at the officers inside. PO Fehn, PO Chen, PO Gopie, PO Yuen, and Lt. Briones all go outside as § 87(2)(b) walks away from the area directly in front of the stationhouse. Lt. Briones quickly returns to the stationhouse, while the other officers remain standing outside for another two minutes. § 87(2)(b) never returns to view after that time.

A different angle of the stationhouse surveillance footage (**BR 03, at 00:19:31**) captures the front of the main desk but does not capture the officers seated behind it. The footage shows PO Fehn periodically moving between the gate inside the stationhouse lobby and the front of the main desk, during the time that he joined officers in instructing § 87(2)(b) to leave. He appears to speak to someone behind the desk at 00:19:30, and then does so again at 00:22:30. He then goes to the back of the stationhouse and returns at 00:23:50 with the sign containing information on how to file a civilian complaint. He then walks out of the stationhouse. At 00:25:32 he returns, turning briefly at 00:25:35 to say something to someone at the desk as he walks with the sign to the back of the stationhouse.

§ 87(2)(b) second cellphone video (**BR 11, at 00:00**) captures PO Fehn bringing the sign outside and holding it up in front of § 87(2)(b). This moment is also recorded from the opposite angle in PO Fehn’s BWC (**BR 06, at 00:55**). PO Fehn tells § 87(2)(b) that the sign explains how to file a complaint, and that he should take a picture of the sign. He does not explain anything on the sign. At no point does he offer to file the complaint for § 87(2)(b) or give § 87(2)(b) a complaint form. § 87(2)(b) is speaking in a raised and upset tone about the way officers treated him. PO Fehn then tells § 87(2)(b) not to sit out there and yell, and § 87(2)(b) says that he is leaving. PO Fehn tells him to get off the block.

PO Gopie’s BWC footage (**BR 07, at 00:00**) captures the period just after PO Fehn displays the sign to § 87(2)(b) when § 87(2)(b) is leaving the scene while still yelling back and forth with officers outside the stationhouse. PO Yuen is first visible in the footage, and PO Chen (wearing a winter hat) can also be seen re-entering the stationhouse. There is no audio, but at 00:12, PO Chen’s mouth is clearly enunciating the words “...fuck you up.” The BWC ends shortly afterward. Lt. Briones activated his BWC when he left the stationhouse in response to § 87(2)(b) returning again to the area in front of the stationhouse (**BR 08, at 00:33**). The footage captures § 87(2)(b) yelling across the street from the stationhouse. Lt. Briones comes outside and tells § 87(2)(b) to leave the block because he is being disorderly. The street is relatively empty at the time.

PO Fehn testified (**BR 15**) that § 87(2)(b) came into the stationhouse screaming and filming. § 87(2)(b) said something about wanting to file a complaint. PO Fehn had told him that he could make a complaint but that he could not film. PO Fehn did not offer a complaint form to § 87(2)(b) because § 87(2)(b) was



screaming and filming inside the stationhouse, not complying with instructions, and continuing to scream once he left the stationhouse. PO Fehn testified that the sign bearing instructions for filing civilian complaints is typically mounted high up behind the main desk, so that civilians can see it when they come to the stationhouse. PO Fehn testified that someone behind the desk instructed him to show the sign to § 87(2)(b). He could not recall who gave him this instruction, though he said it was possibly the desk officer. § 87(2)(b) was already speaking on the phone to IAB by the time PO Fehn came outside with the sign. PO Fehn also testified that he notified someone behind the desk that § 87(2)(b) wanted to file a civilian complaint, though he was not sure if he did so before or after he showed the sign to § 87(2)(b).

Lt. Briones, interviewed approximately five months after the incident, testified (BR 16) that he was the desk officer at the time of the incident. He heard the commotion when § 87(2)(b) walked into the stationhouse and spoke with officers, but he did not know what was said. No one ever informed Lt. Briones that § 87(2)(b) wanted to file a complaint against officers. He did not hear what happened outside of the stationhouse between § 87(2)(b) and other officers. He did not know of a sign in the stationhouse with options for filing complaints against officers. He did not recall PO Fehn ever taking a sign outside to § 87(2)(b). He did not have any conversation with PO Fehn before PO Fehn approached § 87(2)(b) and he did not hear anyone tell PO Fehn to show the sign to § 87(2)(b). Several minutes after § 87(2)(b) first exited the stationhouse, Lt. Briones heard more commotion. He exited the stationhouse and asked § 87(2)(b) to leave the block because he was being disorderly. Lt. Briones did not observe any behavior for which § 87(2)(b) could have been arrested.

PO Brian Sweeney was working at the main desk as the T/S operator, but by the time he was interviewed six months after the incident, he had no specific recollection of Lt. Briones working as the desk officer at the time (BR 17). He recalled § 87(2)(b) entering the stationhouse while filming and yelling, and he recalled that an officer showed § 87(2)(b) the aforementioned sign. However, he did not specifically recall witnessing officers discussing how to respond to § 87(2)(b) or hearing Lt. Briones directing anyone to display the sign to § 87(2)(b). His recollection was that there was a general consensus that the officers could not sit down with § 87(2)(b) and take a formal complaint due to his behavior, and that the sign was used to inform § 87(2)(b) about the various means by which he could file a complaint.

PO Chen testified (BR 18) that § 87(2)(b) was screaming when he came into the stationhouse, and he could not make out what was being said. Lt. Briones told § 87(2)(b) to leave, but he refused and continued screaming and recording. Lt. Briones said that § 87(2)(b) needed to be removed from the stationhouse. PO Chen initially testified that he did not remember cursing or making any threats to § 87(2)(b). He never threatened to use force against § 87(2)(b) and did not intend to use force against § 87(2)(b). He could not remember if he ever said the words, "Fuck you up." Of his own accord, PO Chen testified that he told § 87(2)(b) "Don't come back, I'll be arrest you." He made this statement because § 87(2)(b) was committing disorderly conduct by returning to the stationhouse, refusing to leave the area, and making a lot of noise. Despite the fact that § 87(2)(b) was no longer inside the stationhouse, PO Chen testified that § 87(2)(b) could have been considered trespassing because he had been told to leave. After viewing the BWC footage showing him appearing to mouth the word "fuck," PO Chen still did not remember if he said the phrase "fuck you up" to § 87(2)(b). However, when asked if he could explicitly confirm or deny making the statement, he testified that, based on reading his lips in the BWC footage, he believed that he did make the statement. He did not make the statement for any specific reason.

§ 87(2)(g)

As the video footage shows, Lt. Briones saw § 87(2)(b) enter the stationhouse and begin screaming and filming, and he directed him to leave. However, § 87(2)(b) did not begin making any statements about wanting to file a complaint against officers until after he had left the stationhouse, and Lt. Briones did not become personally involved with him again until the very end of the incident, when § 87(2)(b) was merely yelling

at officers from down the block and Lt. Briones briefly exited to tell him to leave. Although PO Fehn testified that someone working behind the main desk directed him to bring § 87(2)(b) the sign in response to § 87(2)(b) request to file a complaint against officers, he could not identify this officer, and the video footage did not have a view of whichever officer or officers behind the desk spoke to PO Fehn. Lt. Briones denied that anyone told him that § 87(2)(b) wanted to file a complaint or that he directed PO Fehn to respond to § 87(2)(b) request by showing him the sign. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

There is no video footage supporting § 87(2)(b) specific allegation that PO Chen said, “Get the fuck off the block or we’re gonna kick the shit out of you!” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilians may make complaints against police officers at any patrol precinct. When a civilian comes to the stationhouse and requests to make such a complaint, officers must provide them with the option to make a complaint in person, via mail, and via telephone. NYPD Patrol Guide Procedure 207-31 (BR 19).

Officers pledge to maintain a higher standard of integrity than is generally expected of others, and to respect the dignity of each individual and render their services with courtesy and civility. NYPD Patrol Guide Procedure 200-02 (BR 20). Language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation. DAO-DCT Case Number 2017-17276 (BR 21).

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. NYPD Patrol Guide Procedure 221-01 (BR 22).

Members of the public are not allowed to film police activity within department facilities. Officers may order any member of the public who is recording within department facilities to stop such activity. If such person refuses to stop, they then should be ordered to leave the premises. If such person refuses to leave the premises, officers may take proper enforcement action under the trespass statutes. NYPD Administrative Guide Procedure 304-21 (BR 23).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he makes unreasonable noise, engages in threatening behavior, or uses abusive or obscene language in a public place, among other acts. NY Penal Law §240.20 (BR 24). When determining whether a person is guilty of disorderly conduct, police officers are to consider the public harm element of the conduct by assessing the nature and character of the conduct, the time and place where the conduct occurred, the number of people in the vicinity, whether people in the vicinity were drawn to the disturbance, how many were drawn to the disturbance, and how those people reacted to the disturbance. *People v. Baker*, 20 N.Y.3d 354 (2013) (BR 25).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The evidence indicates that PO Chen was incorrect in his belief that § 87(2)(b) had committed disorderly conduct. § 87(2)(b) was yelling and cursing at the officers while standing outside the stationhouse. This behavior did not satisfy the public harm element of the disorderly conduct statute, as it did not evince an intent to cause public inconvenience, annoyance, or alarm, nor did it attract any bystanders. § 87(2)(g)

§ 87(2)(b) the BWC makes apparent that § 87(2)(b) had already walked away when PO Chen called out to him that he would “fuck [him] up.” § 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b)
- Lt. Briones has been a member of the NYPD for 23 years and has been a none of which were substantiated.
  - § 87(2)(g)
- PO Fehn has been a member of the NYPD for ten years and this is the first CCRB complaint to which he has been a subject.
- PO Chen has been a member of the NYPD for three years and this is the first CCRB complaint to which he has been a subject.

#### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 3, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (BR 27).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 5

Investigator: Mic Braun  
Signature

Inv. Mic Braun  
Print Title & Name

July 31, 2023  
Date

Squad Leader: *Daniel Giansante*      IM Daniel Giansante      August 1, 2023  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date